



Decision and Reasons for Decision

Citation:	<i>Dimes and Queensland Police Service</i> [2018] QICmr 32 (17 July 2018)
Application Number:	313487
Applicant:	Dimes
Respondent:	Queensland Police Service
Decision Date:	17 July 2018
Catchwords:	<p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - CONTRARY TO PUBLIC INTEREST - application for complaint information - accountability and transparency - reasons or background for government decision - personal information and privacy of another individual - whether disclosure would, on balance, be contrary to the public interest - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(b) and 49 of the <i>Right to Information Act 2009</i> (Qld)</p> <p>ADMINISTRATIVE LAW - RIGHT TO INFORMATION - REFUSAL OF ACCESS - INFORMATION AS TO EXISTENCE OF PARTICULAR DOCUMENTS - applicant contends agency did not locate all relevant documents - whether agency has taken all reasonable steps to locate documents - whether access to further documents may be refused on the basis that they are nonexistent or unlocatable - section 67(1) of the <i>Information Privacy Act 2009</i> (Qld) and sections 47(3)(e) and 52 of the <i>Right to Information Act 2009</i> (Qld)</p>

REASONS FOR DECISION

Summary

1. The applicant applied to the Queensland Police Service (**QPS**) under the *Information Privacy Act 2009* (Qld) (**IP Act**) for access to a range of documents relating to a complaint she had made to QPS about another individual in 1995.
2. QPS located three pages in response to the application, granted full access to a one page screenshot of a Queensland Transport Vehicle Summary and partial access to a two page CRISP¹ entry regarding the applicant's complaint. QPS decided to refuse access to a video recording² and to information about another individual on one page of

¹ The Crime Reporting Information System for Police (**CRISP**) was a recording and information management system used by QPS until 1995.

² In its decision dated 31 August 2017, QPS also refused access to a video recording. However, QPS advised the Office of the Information Commissioner (**OIC**) on 5 March 2018 that at the time QPS made its decision the decision-maker was unaware the video recording had already been destroyed by QPS.

the CRISP entry on the basis that disclosure would, on balance, be contrary to the public interest.³ QPS also decided to refuse access to some documents on the basis that they were nonexistent or unlocatable.⁴

3. The applicant applied to the OIC for external review of the decision to refuse access to information and also raised concerns that QPS had not located all information relevant to her access application.
4. For the reasons set out below, I affirm QPS' decision to refuse access to part of one page on the basis that its disclosure would, on balance, be contrary to the public interest.⁵ I also find that access to any further documents responding to the application may be refused under section 47(3)(e) of the RTI Act on the basis they are nonexistent or unlocatable.

Background

5. Significant procedural steps taken by OIC in conducting the external review are set out in the Appendix to these reasons.
6. The applicant made a complaint to QPS on 12 November 1995 alleging an individual had assaulted her. QPS investigated the matter and advised the applicant that the Cairns Prosecution section did not recommend the matter proceed to court.⁶ The applicant also had further dealings with QPS, including a complaint she made to the Queensland Police Commissioner, about her concerns that her 1995 complaint was the subject of inaction by QPS.⁷
7. The scope of the access application includes various documents including recordings taken by QPS, QPS notebook entries, reports and station logs and information held on QPS databases. The access application made by the applicant on 27 July 2017 was, in effect, a resubmitted version of the applicant's earlier application to QPS dated 3 May 2017,⁸ following negotiations between QPS and OIC in relation to that earlier application.

Reviewable decision

8. The decision under review is QPS' decision dated 31 August 2017.

Evidence considered

9. Evidence, submissions, legislation and other material considered in reaching this decision are referred to in these reasons (including footnotes and Appendix).
10. The applicant provided extensive written submissions to OIC setting out her arguments in favour of disclosure of the requested information.⁹ I have carefully reviewed all of the applicant's submissions and to the extent they are relevant to the issues in this review, I have taken them into account in reaching my decision. Parts of the applicant's submissions concern issues that are beyond OIC's external review jurisdiction under the IP Act.¹⁰ Importantly, in an external review, OIC does not have any power to investigate complaints of alleged '*maladministration*' by staff at QPS and OIC for '*egregious and*

³ Under section 47(3)(b) of the *Right to Information Act 2009* (Qld) (RTI Act). Decision dated 31 August 2017.

⁴ In response to items 1, 4, 5 and 6 of the access application.

⁵ Under sections 67 of the IP Act and 47(3)(b) of the RTI Act.

⁶ Page one of the CRISP entry regarding the applicant's complaint.

⁷ As set out in further detail in the applicant's submissions OIC received on 11 May 2018.

⁸ Reference RTI/19072.

⁹ Applicant's submissions OIC received on 11 May 2018.

¹⁰ Ibid.

flagrant violation’ of the relevant right to information legislation.¹¹ As these matters fall outside OIC’s jurisdiction in this external review, they are not addressed in these reasons for decision.¹²

Information in issue

11. The information in issue in this review appears in the CRISP entry and comprises the name and date of birth of an individual who was the subject of the applicant’s complaint to QPS in 1995 (**Third Party Information**).

Issue for determination

12. In this review, the issues for determination are whether:
- (i) access to the Third Party Information may be refused under section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest; and
 - (ii) QPS has taken all reasonable steps to locate documents responding to the access application namely:
 - a. a video recording of an interview conducted by QPS with a third party (**Video Recording**)
 - b. tapes and notes of tapes destroyed (**Tapes and Records**)¹³
 - c. a letter sent by the Officer in Charge of the Cairns CIB to the applicant (**Cairns CIB Letter**)¹⁴
 - d. a copy of the report/notebook entry/station log or any other document prepared by two officers about a visit to the applicant’s premises (**2014 Documents**)
 - e. a copy of the report/notebook entry/station log or any other document prepared by a QPS officer after the visit to the applicant’s premises in about May 1995 in response to a complaint the applicant made about inaction of her complaint on 12 November 1995 (**1995 Documents**).

(i) Contrary to public interest

Relevant law

13. Under the IP Act, an individual has a right to be given access to documents of an agency to the extent the documents contain the individual’s personal information.¹⁵ In addition, the IP Act operates with a ‘pro-disclosure bias’¹⁶ meaning that it is Parliament’s intention for an agency to give access to information, unless the public interest favours nondisclosure.¹⁷ Various factors may be relevant to deciding where the balance of the public interest lies¹⁸ and a decision-maker is required to take specific steps in reaching a decision.¹⁹

¹¹ Applicant’s submissions OIC received on 11 May 2018, page 6.

¹² The applicant’s complaints about certain OIC staff were dealt with separately under OIC’s Complaint Management Procedure.

¹³ As mentioned at page four of the information considered by QPS in the applicant’s earlier application RTI/19072.

¹⁴ Ibid.

¹⁵ Section 40 of the IP Act.

¹⁶ Section 64 of the IP Act.

¹⁷ Under section 67 of the IP Act and section 47(3)(b) of the RTI Act, access to information may be refused where disclosure, would, on balance, be contrary to the public interest.

¹⁸ See schedule 4 of the RTI Act. The term ‘public interest’ refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. This means that in general, a public interest consideration is one which is common to all members of, or a substantial segment of, the community, as distinct from matters that concern purely private or personal interests.

¹⁹ Section 49 of the RTI Act. The steps include: disregarding any irrelevant factors, identifying relevant factors favouring disclosure and nondisclosure, and balancing the relevant factors. No irrelevant factors arise in the circumstances of this case and I have not taken any into account in making my decision.

Findings

14. There is a public interest in individuals being able to access their own personal information.²⁰ The Third Party Information comprises the name and date of birth of an individual who was the subject of a complaint made by the applicant to QPS. These details comprise the personal information of that individual and not the applicant.²¹ I am satisfied that the information in issue does not contain any personal information of the applicant. Accordingly, I find this factor favouring disclosure does not apply to the Third Party Information.
15. The applicant submits that disclosure of the Third Party Information would assist her as it is '*contextual information*' which is central to her '*understanding of police responses, and to promoting discussion of public affairs*'.²² Given the applicant's submissions, I have considered whether disclosure of the Third Party Information could reasonably be expected to enhance QPS accountability²³ or reveal the reason for a QPS decision and any background or contextual information.²⁴ I acknowledge the applicant would be able to view the entirety of the CRISP entry regarding her complaint if she was granted access to this information. However, the Third Party Information does not record anything about actions taken by QPS or their processes in responding to the applicant's complaint – it is limited to the personal information of another individual. I am unable to see how disclosure of this information would assist the applicant to understand how QPS assessed her complaint nor do I consider it would provide the applicant with any details about the actions taken by QPS in dealing with her complaint. I am satisfied that information already released to the applicant has furthered the applicant's understanding of how QPS managed her complaint, thereby, discharging these public interest factors to a significant extent. Accordingly, I afford these public interest factors minimal weight in favour of disclosure.
16. The RTI Act recognises that *disclosure* of another individual's *personal information* is a factor favouring nondisclosure which could reasonably be expected to lead to a public interest harm (**Harm Factor**).²⁵ The Third Party Information consists of the name and date of birth of another individual named as a suspect in a QPS complaint record, comprising their personal information.²⁶
17. The concept of 'disclosure' as used in the Harm Factor apprehends the giving of information to a person or entity not otherwise possessed of knowledge of that information.²⁷ Where releasing personal information would involve conveying to any person or entity information that they already know, it cannot be said such release would 'disclose' personal information within the meaning of the Harm Factor, and therefore, the factor will not apply. I accept that, in this case, the applicant was the complainant and the identity of the third party—the subject of her complaint—is already known to the applicant. However, there is no evidence on the information before me that the applicant is aware of the date of birth of the third party, or the particular manner in which the

²⁰ Schedule 4, part 2, item 7 of the RTI Act.

²¹ Section 12 of IP Act defines 'personal information' as '*information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion*'.

²² Applicant's submissions OIC received on 11 May 2018, page 3.

²³ Schedule 4, part 2, item 1 of the RTI Act.

²⁴ Schedule 4, part 2, item 11 of the RTI Act.

²⁵ Schedule 4, part 4, section 6 of the RTI Act.

²⁶ Section 12 of the IP Act.

²⁷ While 'disclose' as used in the Harm Factor is not defined in the RTI Act, the word is defined in section 23 of the IP Act as it relates to the application of the Information Privacy Principles – to '*disclose personal information*' relevantly means to give that information to an entity who does not otherwise know the information and is not in a position to find it out. This accords with the ordinary dictionary definition of '*disclose*': relevantly, to '*make known; reveal*': Macquarie Dictionary Online: www.macquariedictionary.com.au/ (accessed 12 June 2018).

personal information of that individual is dealt with in the context of a QPS complaint record. Accordingly, I consider releasing the Third Party Information would constitute a 'disclosure' and therefore, the Harm Factor applies.

18. As noted at paragraph 16, the Third Party Information appears in the context of a QPS complaint record. I consider being named as a suspect in a QPS complaint record is highly sensitive information that is not generally known, being contained in internal QPS documents that are not otherwise published. I have also taken into account it is not possible to place restrictions on the use, dissemination or republication of information released under the IP Act. On this basis, I consider the public interest harm that could be anticipated from disclosure is moderate.
19. The RTI Act also recognises that the public interest will favour nondisclosure of information if it could reasonably be expected to prejudice the protection of an individual's right to privacy.²⁸ The concept of 'privacy' is not defined in either the IP Act or the RTI Act. It can, however, essentially be viewed as the right of an individual to preserve their 'personal sphere' free from interference from others.²⁹
20. Given the information is highly sensitive and appears in the context of a QPS complaint record, I am satisfied that disclosing the Third Party Information could reasonably be expected to prejudice the subject individual's right to privacy.³⁰ I accept that the applicant's involvement means that some of the information may be known to her, reducing the weight of these nondisclosure factors to some degree. For these reasons I afford both these factors moderate weight in favour of nondisclosure of the Third Party Information.

Conclusion

21. I accept there is a general public interest in furthering access to information held by government agencies and enhancing QPS's accountability and transparency in the management of complaints made by members of the public. I am satisfied that, in this case, the weight of the nondisclosure factors is determinative in terms of protecting the privacy and personal information of the subject individual. Accordingly, I find that disclosure of the Third Party Information would, on balance, be contrary to the public interest and therefore access to it may be refused under section 47(3)(b) of the RTI Act.

(ii) Nonexistent documents

22. The applicant contends that more documents should have been located by QPS in response to her application and submits that:

*Folder 2 [of her submissions] shows that the documents in question were detailed by me, the applicant, and that they do exist. In fact, the reviewer's account of her role in this respect suggest that no genuine search of files was demanded by her, and that she was satisfied by QPS assurances that they had.'*³¹

²⁸ Schedule 4, part 3, item 3 of the RTI Act.

²⁹ Paraphrasing the Australian Law Reform Commission's definition of the concept in 'For your information: Australian Privacy Law and Practice' Australian Law Reform Commission Report No. 108 released 12 August 2008, at paragraph 1.56.

³⁰ Schedule 4, part 3, item 3 of the RTI Act.

³¹ Applicant's submissions OIC received on 11 May 2018, page 3.

Relevant law

23. Access may be refused to documents that are nonexistent or unlocatable.³² A document is nonexistent if there are reasonable grounds to be satisfied it does not exist.³³ A document is unlocatable if it has been or should be in the agency's possession and all reasonable steps have been taken to find it, but it cannot be found.³⁴
24. To be satisfied that a document does not exist, the Information Commissioner has previously recognised that an agency must rely on its particular knowledge and experience, having regard to various key factors including:
 - the administrative arrangements of government
 - the agency's structure, functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and other legal obligations that fall to it)
 - the agency's practices and procedures (including, but not limited to, its information management approaches); and
 - other factors reasonably inferred from information supplied by the applicant including the nature and age of the requested documents, and the nature of the government activity to which the request relates.³⁵
25. By considering the above factors, an agency may ascertain that a particular document was not created because, for example, the agency's processes do not involve creating that specific document. In such instances, it is not necessary for the agency to search for the document. Rather it is sufficient that the relevant circumstances to account for the nonexistent document are adequately explained by the agency.
26. An agency may also rely on searches to satisfy itself that a document does not exist. In those cases, all reasonable steps must be taken to locate the documents.³⁶ Such steps may include inquires and searches of all relevant locations identified after consideration of the key factors listed in paragraph 24 above.
27. In determining whether a document is unlocatable the RTI Act requires consideration of whether there are reasonable grounds for the agency to be satisfied that the requested document has been or should be in the agency's possession; and whether the agency has taken all reasonable steps to find the documents. In answering these questions, regard should again be had to the circumstances of the case and the key factors.³⁷
28. Where an applicant contends that an agency has failed to locate documents there is a practical onus on the applicant to provide reasonable grounds to believe that the document exists and to warrant further searches within the agency.³⁸

³² Section 47(3) of the RTI Act.

³³ Section 52(1)(a) of the RTI Act.

³⁴ Section 52(1)(b) of the RTI Act.

³⁵ *PDE and University of Queensland* (Unreported, Queensland Information Commissioner, 9 February 2009) (*PDE*) at [37]-[38]. The decision in *PDE* concerned the application of section 28A of the now repealed *Freedom of Information Act 1992* (Qld). Section 52 of the RTI Act is drafted in substantially the same terms as the provision considered in *PDE* and, therefore, the Information Commissioner's findings in *PDE* are relevant here.

³⁶ As set out in *PDE* at [49].

³⁷ *Lester and Department of Justice and Attorney-General* [2017] QICmr 17 (16 May 2017).

³⁸ *Mewburn and Department of Local Government, Community Recovery and Resilience* [2014] QICmr 43 (31 October 2014) at [13].

Findings

29. QPS originally refused access to a video recording of an interview with a third party relevant to the applicant's complaint on the basis that its disclosure would, on balance, be contrary to the public interest. During the course of the external review, QPS then advised OIC that at the time QPS made its decision the decision-maker was unaware the Video Recording had already been destroyed. QPS provided OIC with formal written evidence of the Video Recording's destruction. Accordingly, I do not consider there are any steps QPS could take to recover the Video Recording. In these circumstances, I consider that access to the Video Recording may be refused on the basis that it does not exist.³⁹
30. QPS advised OIC that the Tapes and Records would have been destroyed in 2011 in accordance with its Retention and Disposal Schedule and provided OIC with an extract from QPRIME⁴⁰ evidencing the Tapes and Records were destroyed on 2 December 2011. The current QPS recordkeeping policy⁴¹ states that documents related to complaints of assault, (which was the nature of the applicant's complaint to QPS on 12 November 1995), are to be retained by QPS for a period of 10 years after the last action. Based on the evidence available to OIC, the last action on this file appears to have been in May 1996. As such, I am satisfied that the Tapes and Records were validly destroyed consistent with the timeframe under the QPS Retention and Disposal Policy and therefore access may be refused on the basis that they do not exist.⁴²
31. In relation to the Cairns CIB Letter, QPS submits that it has undertaken extensive searches in QPRIME and the advice received from the Far North District was that it was unsuccessful in locating this document. QPS has provided OIC with signed certification forms from relevant QPS officers, including the Officer in Charge of Cairns CIB which certify that searches were conducted electronically, in physical files, and QPRIME, and no documents were found. I note the applicant recently submitted to OIC that in fact she '*never believed such a letter existed*' and in any event she '*certainly never received it*'⁴³ which seems to indicate the applicant concedes the non-existence of the Cairns CIB Letter. As such, I am satisfied that access to the Cairns CIB Letter may be refused on the basis that it does not exist.⁴⁴
32. QPS also provided OIC with evidence that it has performed electronic and hardcopy searches of notebooks, electronic logs, patrol logs, QPRIME and case notes for the 1995 Documents and 2014 Documents. I consider the searches and enquiries undertaken by QPS have been comprehensive and targeted searches in the appropriate locations, including electronic databases. I also consider it is reasonable to expect that QPS officers would have made some record when visiting the applicant in 1995 and 2014. Nevertheless, I am satisfied QPS has taken all reasonable steps to locate the 2014 Documents. Accordingly, I find that access to the 2014 Documents may be refused on the basis that they are nonexistent.⁴⁵
33. Further, in relation to the 1995 Documents, I note the applicant made her complaint about inaction on her file in November that year and therefore, it is unlikely that documents from May 1995 (six months prior) would exist in relation to inaction on the complaint as presumably that process would have occurred after the complaint itself. However, even if the reference in the application should have been to May 1996, (six months after the

³⁹ Section 47(3)(e) and 52(1)(a) of the RTI Act.

⁴⁰ This is the database used by QPS to record complaints, investigations and various dealings with members of the public.

⁴¹ QPS Retention and Disposal Schedule Version 7 dated 12 September 2008.

⁴² Section 47(3)(e) and 52(1)(a) of the RTI Act.

⁴³ Applicant's submissions OIC received on 11 May 2018, page 3.

⁴⁴ Section 47(3)(e) and 52(1)(a) of the RTI Act.

⁴⁵ Ibid.

complaint), I consider QPS searches have been sufficiently comprehensive to reveal documents, if they existed. I also note that the CRISP database was replaced by QPRIME around the year 2000 and all the complaint records were migrated across. In some instances, QPS has explained that where a full investigation did not occur in relation to a complaint, very minimal records were transferred across to the new system. While documents may have existed, given the change in QPS databases and the time that has passed, I am satisfied that this is an adequate explanation of the absence of any further 1995 Documents. As such, I consider access to the 1995 Documents may be refused on the basis that they do not exist or are unlocatable.⁴⁶

34. In summary, I am satisfied that QPS' search and enquiry processes have been comprehensive and targeted to the appropriate areas and certifications have been obtained from the relevant QPS officers. While the applicant contends that she has provided OIC a bundle of documents which illustrate that the further documents should have been located by QPS, I have carefully reviewed this information and I am satisfied it largely comprises correspondence from the applicant to QPS and is not evidence that more documents exist. Given the evidence of destruction of certain records, and the change in QPS recordkeeping systems since 1995, I am satisfied that QPS has taken all reasonable steps to locate information in response to the terms of the access application. Therefore I find that access to any further documents may be refused under section 47(3)(e) and 52(1)(a) and (b) of the RTI Act on the basis that they do not exist or are unlocatable.

DECISION

35. For the reasons set out above, I affirm the decision under review, and find that:
- (i) access to the Third Party Information may be refused under section 67(1) of the IP Act and section 47(3)(b) of the RTI Act on the basis that its disclosure would, on balance, be contrary to the public interest; and
 - (ii) QPS has taken all reasonable steps to locate documents responding to the access application and access to any further documents may be refused under section 67(1) of the IP Act and sections 47(3)(e) and 52(1)(a) and (b) of the RTI Act, on the basis they do not exist or cannot be located.
36. I have made this decision as a delegate of the Information Commissioner, under section 139 of the IP Act.

S Shanley
A/Assistant Information Commissioner

Date: 17 July 2018

⁴⁶ Section 47(3)(e) and 52(1)(a) and (b) of the RTI Act.

APPENDIX

Significant procedural steps

Date	Event
5 September 2017	OIC received the external review application and supporting submissions from the applicant.
8 September 2017	OIC asked QPS to provide the relevant procedural documents.
11 September 2017	OIC received the requested procedural documents from QPS.
18 September 2017	OIC notified QPS and the applicant that the external review application had been accepted and confirmed the issues under review. OIC asked QPS to provide copies of the documents located in response to the application and records of searches conducted by QPS.
3 October 2017	OIC received a copy of the requested documents from QPS.
6 December 2017	OIC received submissions from the applicant.
19 December 2017	OIC received further search records from QPS.
5 March 2018	OIC received submissions from QPS.
7 March 2018	OIC received further search records and submissions from QPS.
13 March 2018	OIC conveyed a written preliminary view to the applicant and invited her to provide submissions supporting her case.
11 May 2018	OIC received submissions from the applicant.